In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 892

ANGELA MORRIS AMADO ROCHA, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner seeks review of the judgment of the Court of Appeals for the First Circuit, affirming the denial of a certificate of citizenship and sustaining an order of deportation. The opinion of the court of appeals is reported at 351 F. 2d 523.

The essential facts are undisputed. Petitioner's mother was born in the United States in 1901. In 1916, she married a Portuguese citizen and subsequently moved to Portugal. She was divorced in 1932. Petitioner, an illegitimate child, was born in Portugal in 1931. She first came to the United States in 1961, long after reaching her majority.

Under the Act of March 2, 1907, ch. 2534, 34 Stat. 1228, petitioner's mother, by marrying a foreign

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national, lost her United States citizenship. Petitioner's claim to citizenship rests primarily on the contention that this Act, which was sustained in *Mackenzie* v. *Hare*, 239 U.S. 299, should now be held unconstitutional and thus ineffective to have deprived her mother of United States nationality. On this basis, petitioner argues that she acquired United States citizenship at birth under Section 205 of the Nationality Act of 1940, ch. 876, 54 Stat. 1139, which conferred United States citizenship on an illegitimate child "if the mother had the nationality of the United States at the time of the child's birth and had previously resided in the United States."

There is no occasion for this Court to reexamine its ruling in *Mackenzie* v. *Hare*, *supra*. The Act of 1907, here involved, was repealed in 1922 and liberal provisions were enacted, in the 1922 Act and thereafter, by which women who had lost their nationality solely through marriage could resume their United States citizenship. See, *e.g.*, Section 324 of the Immigration and Nationality Act of 1952, 8 U.S.C. 1435.[1] The validity of the 1907 Act must be judged

[1] Petitioner, in her questions (Pet. 2) presents, although she does not argue, a contention based on one such provision—the Act of June 25, 1936, 49 Stat. 1917 (which was amended in respects not here material by the Act of July 2, 1940, 54 Stat. 715). Petitioner argues that her mother automatically reacquired United States nationality under that Act, as if she had never lost it, and therefore petitioner acquired United States nationality at birth. Petitioner quotes (Pet. 7) only that part of the 1936 act which provided that "hereafter" a woman who lost citizenship solely by reason of her marriage to an alien prior to 1922 should be deemed to be a citizen of the United States as if her marriage had taken place after 1922. She

in relation to its effective period—from 1907 to 1922—when the legal status of women, in this country and elsewhere, was markedly different from the situation at present. For example, the Nineteenth Amendment to the Constitution, prohibiting discrimination in voting rights on the basis of sex, was not effective until 1920. The decision of this Court in *Schneider* v. *Rusk*, 377 U.S. 163, declaring unconstitutional a statute providing for denationalization of aliens residing for three years in the country of former nationality does not impair the ruling of *Mackenzie* v. *Hare*, that, as of its day, the 1907 Act was a reasonable exercise by Congress of the power to regulate the relations of this country to others. See *Perez* v. *Brownell*, 356 U.S. 44.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

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neglects to quote the proviso that "no such woman shall have or claim any rights as a citizen of the United States until she shall have duly taken" an oath of allegiance. There is no claim that petitioner's mother took such an oath. While the Immigration and Naturalization Service took the position that this Act reconferred citizenship on the woman as of 1936, the courts held that citizenship was not regained until after the oath was taken. *Shelly* v. *United States*, 120 F. 2d 734 (C.A.D.C.); *In re Shee Mui Chong Yuen's Repatriation*, 73 F. Supp. 12 (D. Hawaii). On neither interpretation was the mother a citizen of the United States at the time of petitioner's birth.

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